

LIBRARY  
SUPREME COURT. U. S.

Office-Supreme Court, U.S.  
FILED

OCT 18 1962

JOHN F. DAVIS, CLERK

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1962

No. 37

HEWITT-ROBINS INCORPORATED,

*Petitioner,*

v.

EASTERN FREIGHT-WAYS, INC.,

*Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE SECOND CIRCUIT

**RESPONDENT'S SUPPLEMENTAL  
MEMORANDUM**

MILTON D. GOLDMAN,  
29 Broadway,  
New York 6, N. Y.,  
*Attorney for Respondent.*

IN THE  
**Supreme Court of the United States**  
**OCTOBER TERM, 1962**

---

No. 37

---

HEWITT-ROBINS INCORPORATED,

*Petitioner,*

v.

EASTERN FREIGHT-WAYS, INC.,

*Respondent.*

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE SECOND CIRCUIT

---

**RESPONDENT'S SUPPLEMENTAL  
MEMORANDUM**

Upon the oral argument of the above entitled appeal, counsel for the Petitioner observed that the Motor Carrier Act does not contain language identical to Section 15(S) of Part-1 of the Interstate Commerce Act which provides that a shipper, "subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination • • •"

On the other hand, counsel for the Respondent advised the members of this Court that routing instructions furnished by a shipper are, as a matter of practice, honored by the Respondent unless it is not practicable so to do. That statement has been confirmed during subsequent conferences had between counsel and certain responsible representatives of the Respondent.

Although the specific language of Section 15(8) of Part 1 is not to be found in Part 2 of the Act, it does not appear that it has ever been decided whether a shipper nevertheless has such a right by implication in light of the statutory scheme and legislative purpose. The absence of specific language does not necessarily require the conclusion that a shipper by motor carrier has no right to designate one of two or more available through routes. In any event, the Respondent respectfully submits that the absence of such specific statutory language in the Motor Carrier Act has no legitimate bearing upon the narrow issue presented upon this appeal. That issue arises out of the Petitioner's hypothesis that its shipments were tendered *unrouted*. It does not require a determination as to whether under the Motor Carrier Act a shipper has a right to designate one of two or more available through routes, nor does it involve any question of liability resulting from the failure of a motor carrier to conform to such routing instructions.

The only question presented for decision is whether the Motor Carrier Act permits the recovery of reparations where the Interstate Commerce Commission, *applying the statutory standard of reasonableness*, has disapproved a motor carrier's routing practice—not because it constituted a deliberate wrong, but because circumstances proven in justification were deemed insufficient. In other words, was the *statutory duty* of Section 216 intended to

create a right of recovery which can be adjudicated solely by the Commission from whom the power to award reparations was specifically withheld by Congress? The Respondent contends that these questions should be answered in the negative.

Respectfully submitted,

MILTON D. GOLDMAN,  
*Attorney for Respondent.*

WILFRED R. CARON,  
*of Counsel.*